

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED TARIFF FILING OF YMAX)	CASE NO.
COMMUNICATIONS CORP. TO REVISE ITS)	2012-00257
ACCESS SERVICES TARIFF)	

ORDER

On June 1, 2012, YMax Communications Corp. ("YMax") submitted a proposal to revise its access services tariff to be effective on and after July 1, 2012. BellSouth Telecommunications, LLC d/b/a AT&T Kentucky, AT&T Communications of the South Central States, LLC and TCG Ohio (collectively "AT&T") filed a motion on June 15, 2012, to intervene, to suspend, and to investigate the proposed tariff changes by YMax. The Commission, by Order dated June 28, 2012, granted AT&T's motion to intervene and suspended YMax's proposed tariff. The Commission allowed the First Revised Page 59 of the tariff, which incorporated the access rates contained in YMax's Federal Access Rates as the rates to be charged in Kentucky. The Commission, by Order dated July 27, 2012, granted the motion to intervene of MCI Communications Services, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Service & Systems and Verizon Select Services, Inc. (collectively "Verizon").

YMax's proposed tariff allegedly sets rates and charges for access services it does not provide, which both AT&T and Verizon assert the Federal Communications Commission ("FCC") has prohibited. AT&T pointed to several provisions in YMax's

proposed tariff that AT&T argued would allow YMax to potentially charge for access services that it does not provide. Verizon's objections to the suspended tariff were similar to AT&T's.

On August 23, 2012, YMax notified the Commission that it was withdrawing the tariff sheets that it had filed on June 1, 2012, and that the Commission had suspended. YMax did not withdraw the sheet containing the access rates that the Commission had allowed to become effective. On August 28, 2012, YMax moved the Commission to close the proceeding investigating its tariff. As grounds for its motion, YMax stated that because it had withdrawn the disputed tariff sheets, there were no issues needing resolution currently before the Commission. YMax also asserted that, because the issues were moot, no party would be prejudiced by the closing of the proceeding.

AT&T and Verizon both filed responses to YMax's motion to close the proceeding. AT&T states that, while it does not object to the withdrawal of the tariff or closing of the proceeding, it will not pay YMax if YMax bills for end-office switching services that YMax does not provide. AT&T argues that in three separate orders,¹ the FCC has concluded that YMax does not offer to provide end office switching and, therefore, could not bill AT&T for those services.

AT&T states that it wants it "clearly understood" that it:

- (i) [C]ontinues to have substantial and valid concerns regarding the legality of YMax's existing access tariffs regarding (or applied to) VoIP-PSTN traffic;
- (ii) contends that the end office switching charges that YMax has consistently billed to AT&T for several years . . . are flatly inconsistent with both YMax's switched access tariffs and with the orders and rules of the FCC . . . ; and
- (iii) intends to continue to

¹ *Ymax Order*, 26 FCC Rcd. 5742 ¶¶ 3-9, 14, 19, 38-45 (rel. Apr. 8, 2011); *Connect America Order*, 26 FCC Rcd. 17663 ¶ 970 (Nov. 8, 2011); and *YMax Clarification Order*, 27 FCC Rcd. 2142, ¶¶ 4-5 (rel. Feb. 27, 2012).

dispute and withhold payment of any unlawful YMax switched access charges on those grounds, *i.e.*, that YMax is billing those charges in violation of its tariffs and of FCC rules and orders.²

AT&T further argues that this proceeding would have been a good means by which to address the disputed tariff provisions. AT&T cautions that if the billing disputes continue, it is likely that the dispute will be presented to the Commission again.

The Commission finds that YMax's motion should be granted. AT&T and Verizon's dispute with YMax focused on the proposed language of the tariff, not the application of YMax's current tariff. If a billing dispute arises in the future regarding YMax's tariff, particularly the interpretation of "end office switching," then AT&T and Verizon, or any interested party, may bring a complaint to the Commission. However, in the absence of an active controversy or billing dispute, there is no issue for the Commission to resolve now that the tariff has been withdrawn. Accordingly, the issues in this case are moot and the proceeding should be dismissed.

IT IS THEREFORE ORDERED that:

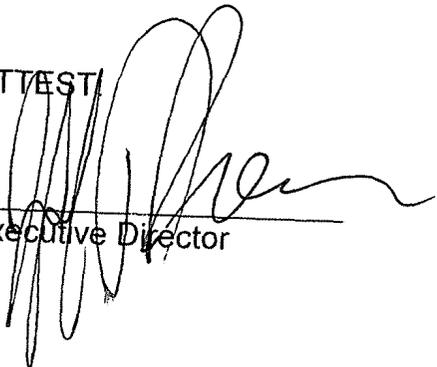
1. YMax's motion to close the proceeding is granted.
2. This case is dismissed and removed from the Commission's docket.
3. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

² AT&T's Response to Ymax Communications Corp.'s Notice of Withdrawal and Motion to Close Proceeding at 3.

By the Commission

ENTERED *MS*
OCT 11 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST



Executive Director

Case No. 2012-00257

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